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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re EDWARD C., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant.

D062516

(Super. Ct. No. SJ12550)

APPEAL from an order of the Superior Court of San Diego County, Garry G. Haehnle,
Judge. Affirmed.

A.A. appeals a juvenile court order terminating her parental rights to her minor son, Edward C., under Welfare and Institutions Code section 366.26.¹ A.A. challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception to adoption did not apply to preclude terminating her parental rights. We affirm the order.

¹ Statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2011, the San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court under section 300, subdivision (b) alleging eight-month-old Edward was at substantial risk of serious physical harm because A.A. exposed him to violent confrontations in the home when she brandished a knife during an argument with the maternal grandmother, threatened to commit suicide and broke a glass window with her hand.² This incident occurred in Edward's presence while A.A. was under the influence of alcohol. The petition also alleged A.A. was unable to provide Edward with regular care because she had a mental illness that required involuntary psychiatric care. The court detained Edward with the maternal grandparents.³

At the contested jurisdiction and disposition hearing, the court sustained the allegations of the petition, declared Edward a dependent, removed him from parental custody and placed him with the maternal grandparents. The court ordered A.A. to participate in reunification services, including a psychiatric evaluation, individual counseling, parenting education and outpatient drug treatment.

During the next six months, A.A. visited Edward consistently while attending Teen Options, an outpatient drug treatment program. However, she did not change Edward's diapers, feed or bathe him, and she generally ignored him. A.A. refused to take on a parental

² At the time the petition was filed, A.A. was not quite 16 years old.

³ Edward's father, a documented gang member with a criminal history, is not a party to this appeal.

role or place Edward's needs above her own. She left visits to be with friends and showed no empathy for Edward or any ability to understand his developmental needs. She still had mental health issues.

A.A. was discharged from Teen Options because she failed to participate and had positive, diluted or missed drug tests. She then participated in two inpatient treatment programs. The maternal grandparents drove Edward to visit A.A. two or three times a week at the treatment center, and noticed her parenting skills were improving. However, in the social worker's opinion, A.A.'s prognosis for reunifying with Edward was poor and he recommended the court terminate services.

According to an addendum report, A.A.'s addiction to alcohol was escalating and she recently admitted using methamphetamine. A.A. was discharged from her inpatient drug treatment program. She visited Edward at the maternal grandparents' house six times in six weeks. The grandparents said these visits were "good," describing how A.A. watched television and played games with Edward. Although A.A. had been offered extra support and special services tailored to her age and circumstances, the social worker believed she would not be able to reunify with Edward by the 12-month hearing.

At the contested six-month hearing, the court found A.A. had not participated regularly or made substantive progress in her court-ordered treatment plan, and there was no substantial probability Edward would be returned to her custody within the next six months. The court terminated reunification services and set a hearing under section 366.26 to select and implement a permanent plan for Edward.

Social worker Cotrese Stovall assessed Edward as adoptable. She had observed only one visit between A.A. and Edward because A.A. had no permanent address, was living on the streets and did not respond to messages Stovall left for her with the maternal grandparents. During the one visit Stovall observed, Edward walked toward A.A. and reached his arm out to her. A.A. picked him up and kissed him, and he seemed comfortable in her arms. A.A. ignored Stovall's request to contact her to arrange future visits.

The maternal grandparents reported A.A. had been coming to their home twice a week to retrieve clothing from their garage. She would say hello to them and leave. Sometimes, she would stand inside the front door and hold Edward for five minutes before leaving. A.A. telephoned three or four times a day to speak to Edward and occasionally bought clothing and toys for him. Edward referred to her by her first name. He cried when separated from the maternal grandmother.

In Stovall's opinion, Edward's relationship with A.A. was pleasant and resembled that of a cousin or family friend. Edward did not look to A.A. to meet his needs. He had lived with the maternal grandparents since his birth. Consequently, he had a strong, significant parent-child relationship with them. The maternal grandparents wanted to adopt Edward and an adoptive home study was pending.

At the contested selection and implementation hearing, the court received in evidence Agency's reports and heard arguments of counsel. The court found Edward was adoptable and none of the exceptions to adoption applied. The court terminated parental rights and referred Edward for adoptive placement.

DISCUSSION

A.A. contends the evidence was insufficient to support the court's finding the beneficial parent-child relationship exception to adoption did not apply to preclude terminating her parental rights. She asserts she regularly visited Edward, with whom she shared a warm and loving bond.

A

After reunification services are terminated, the focus of a dependency proceeding shifts from preserving the family to promoting the best interests of the child, including the child's interest in a stable, permanent placement that allows the caregiver to make a full emotional commitment to the child. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.) At the selection and implementation hearing, the court has three options: (1) terminate parental rights and order adoption as the permanent plan; (2) appoint a legal guardian for the child; or (3) order the child placed in long-term foster care. (*Ibid.*)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of the specified statutory exceptions. (§ 366.26, subd. (c)(1)(A) & (B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would

benefit from continuing the relationship." We have interpreted the phrase " 'benefit from continuing the . . . relationship' " to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord *In re Jason J.* (2009) 175 Cal.App.4th 922, 936.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive emotional attachment from child to parent. (*Ibid.*; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

We review an order terminating parental rights for substantial evidence. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Baby*

Boy L. (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Here, the evidence showed A.A. initially saw Edward regularly at the maternal grandparents' home. However, she did not change his diapers, feed or bathe him or show any interest in him. A.A. went to the maternal grandparents' home not to visit Edward, but to sleep. She chose to spend time with friends instead of tending to Edward's needs. While A.A. attended inpatient drug treatment, her visits with Edward were regular only because the maternal grandparents drove Edward to the treatment facility to see her. Once A.A. was discharged from that program, her visits became sporadic. Visits declined even further when services were terminated, consisting mostly of multiple telephone calls every day. This type of interaction with a two-year-old child was not what the Legislature envisioned when it required a parent have regular visitation and contact.

Even were we to consider A.A.'s contact with Edward to be "regular" within the meaning of the statute, A.A. did not meet her burden of showing she had a beneficial parent-child relationship with Edward so as to overcome the legislative preference for adoption. Although A.A. was sometimes affectionate with Edward, watched television and played with him and bought him toys and clothes, she failed to act in a parental manner by placing Edward's needs above her own. She did not understand Edward's developmental needs or show empathy for him. Edward related to A.A. as a cousin or family friend. A.A.'s inability or unwillingness to address her substance abuse and mental health issues or have a parental

role in Edward's life prevented her from developing the type of parent-child relationship that could be deemed "beneficial." In this regard, Edward's well-being was not promoted by his relationship with A.A. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Moreover, the affection A.A. and Edward shared during visits was not enough to show that terminating the parent-child relationship would result in great harm to Edward. (*In re Jason J.*, *supra*, 175 Cal.App.4th at pp. 936-937; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) There was no evidence Edward was negatively affected by A.A.'s absence from his daily life. "A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466; *In re Jason J.*, at p. 937.)

Further, A.A. has not shown that maintaining her relationship with Edward outweighed the benefits of adoption for him. For his entire life, Edward had to depend on the maternal grandparents to meet his daily physical, medical, developmental and emotional needs. He is bonded to them, and they want to adopt him. "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.)

Although A.A. believes a permanent plan other than adoption would serve Edward's best interests, adoption is the only option that would provide Edward with the stability and permanence he so desperately needs. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419 [Legislature has decreed guardianship is not in best interests of children who cannot be

returned to their parents; only adoption affords the most permanent and secure alternative.]; *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368-1369 [parents' preference to preserve family unit does not override best interests of minors in stability and security of adoptive home].)⁴ The court was entitled to accept the social worker's opinion that the benefits of adoption for Edward outweighed the benefits of maintaining a relationship with A.A. We cannot reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Casey D., supra*, 70 Cal.App.4th at p. 53.) Substantial evidence supports the court's finding the beneficial parent-child relationship exception did not apply to preclude terminating parental rights.

DISPOSITION

The order is affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.

⁴ A.A.'s reliance on *In re S.B.* (2008) 164 Cal.App.4th 289, 298-300, is misplaced. We are compelled to reiterate "*S.B.* is confined to its extraordinary facts." (*In re C.F.* (2011) 193 Cal.App.4th 549, 558.) In *S.B.*, the evidence showed that despite the child's strong, positive, significant relationship with her caregiver, she would be "greatly harmed" by the loss of the equally significant, positive relationship she shared with her father. (*In re S.B.*, at p. 300.) Additionally, the father in that case had complied with every aspect of his case plan and the child wanted to live with him. (*Id.* at pp. 300-301.) Here, in contrast, A.A. made no such showing.